10 October 1974

Mr. Gary Sellers
Committee on Appropriations
United States Senate

Gary:

Attached is the package on S. 3418. It is my understanding the bill will not come up this afternoon but probably will be taken up tomorrow. I think it would be much better if Senator Ervin could be approached before the bill comes on the floor rather than after. Jim Davidson, of the Committee staff, has promised us he would state our case to Senator Ervin but he is not certain that he can convince him.

Many thanks.

George L. Cary

CIA Position on S. 3418, a bill "To establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals...and for other purposes."

The application of this bill to a number of CIA files and information systems could seriously impair the Agency's ability to carry out its functions. Section 203 of the bill provides limited exemptions for national defense or foreign policy reasons. It could be argued, however, that certain information relating to sensitive intelligence sources and methods could not be exempted for these reasons--even though the release of this information would be damaging to the U.S. intelligence collection effort and the national interest and actually be in conflict with the provisions of the National Security Act of 1947. Section 102(d)(3) of that Act places the responsibility upon the Director of Central Intelligence for protecting intelligence sources and methods from unauthorized disclosure.

In letters dated 23 July 1974 and 26 September 1974, the Director of Central Intelligence expressed his concern about the effect this bill and an earlier draft would have on his responsibilities. He stated his view that the protection of intelligence sources and methods requires that practically all the Agency's information on individuals and the details of the Agency's information systems remain classified and not subject to public disclosure as provided under S. 3418.

The Director of Central Intelligence originally requested (in his letter of 23 July 1974) that the Agency be specifically exempted from all provisions of this legislation. When advised that Chairman Ervin would not accept a complete exemption, the Director requested (letter of 26 September 1974) exemption from specific provisions of the bill and the inclusion of a general statement that the bill not be construed so as to impair or affect the authorities and responsibilities of the Director. As an absolute minimum, the Agency requests that the following language be inserted in the bill at Section 203(d):

> None of the provisions of this Act shall be construed so as to impair or affect the authorities and responsibilities of the Director of Central Intelligence under the National Security Act of 1947, as amended, or the Central Intelligence Agency Act of 1949, as amended.

[redacted]

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

[redacted]

~~29 JUN 1974~~

23 JUL 1974

Honorable Sam J. Ervin, Jr., Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for the views and recommendations of this Agency on S. 3418, "To establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State, and local governments, and other organizations regarding such information, and for other purposes."

S. 3418 establishes a comprehensive program for the protection of individual privacy which in principle I personally endorse. As the bill recognizes, however, there are circumstances when information on individuals must in the national interest remain confidential. Section 202 of the bill provides an exemption from the provisions of the Act for three such circumstances:

> "(1) to the extent that information in such systems is maintained by a Federal agency, and the head of that agency determines that the release of the information would seriously damage national defense;
>
> "(2) which are part of active criminal investigatory files compiled by Federal, State, or local law enforcement organizations, except where such files have been maintained for a period longer than is necessary to commence criminal prosecution; or

"(3) maintained by the press and news media, except information relating to employees of such organizations."

The National Security Act of 1947 and the Central Intelligence Agency Act of 1949, the statutory bases of CIA, recognize that the conduct of foreign intelligence by its nature must be confidential. Accordingly, the Director was charged with the responsibility for protecting Intelligence Sources and Methods from unauthorized disclosure and the Agency was exempted from provisions of law requiring certain public disclosures (50 U. S. C. A. 403g).

Section 201 of S. 3418 would require Federal agencies to publicly disclose extensive details regarding information systems that contain personal information and notify all individuals who are subjects of such information systems of this fact. Agencies would also be required to furnish upon the request of any individual who is a subject of an information system, including non-resident foreign nationals, the details and source of the information.

It is my view that the protection of Intelligence Sources and Methods requires that a substantial percentage if not all of this Agency's holdings of information on individuals and details of our information systems must remain classified and not subject to public disclosure under S. 3418. This is so not only to protect the lives and well being of agents abroad but also to preserve the sources and methods used to collect foreign intelligence information which is vital to our national security. In addition to these considerations, I wish to stress that the bulk of the Agency's foreign intelligence information concerns foreign personalities and obviously should be exempted from the disclosure requirements of the bill.

Although S. 3418 contains a provision to exempt from the operation of the Act information systems maintained by a Federal agency to the extent that information in such systems, if released, would seriously damage national defense, some information maintained by CIA concerning Intelligence Sources and Methods arguably would not qualify for exemption as the bill is now written. In the interest of avoiding a possible statutory

conflict and to ensure that CIA will be able to continue to effectively carry out its foreign intelligence mission, it is requested that the proposed legislation be amended to specifically exempt this Agency. Recommended language is enclosed.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

/s/ W. E. Colby

W. E. Colby
Director

Enclosure

Distribution:
Original - Addressee
1 - DCI
1 - DDCI
1 - ER
1 - OLC Chrono (w/basic)
OLC/SWH:bao (26 Jun 74)
1 - OMB Liaison file

Suggested Language for S. 3418

Add section 202(4) as follows:

"(4) maintained by the Central Intelligence Agency."

LLM

Executive Registry
74-1468/2

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

OLC 74-1992

26 SEP 1974

Honorable Sam J. Ervin, Jr., Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to a request from the staff of your Committee for views on a new Committee Print, No. 5, of S. 3418.

As explained in my letter to you of 23 July 1974 on S. 3418, certain information in the possession of this Agency must in the national interest remain confidential. The National Security Act of 1947 and the Central Intelligence Agency Act of 1949, have charged the Director of Central Intelligence with the responsibility for protecting Intelligence Sources and Methods from unauthorized disclosure (50 U. S. C. A. 403 (d)(3)) and exempted the Agency from provisions of law requiring public disclosures concerning organization, functions, names, titles, salaries, and numbers of personnel employed by the Agency (50 U. S. C. A. 403g).

The vast majority of this Agency's personal information holdings (foreign persons living abroad) have been excluded by definition in Committee Print No. 5. However, the application of the bill to a number of other files and information systems could seriously impair this Agency's mission.

Although section 203 provides limited exemptions for national defense or foreign policy reasons, certain sensitive intelligence sources and methods information arguably could not be exempted for these reasons even though its release would be damaging to the U. S. intelligence collection effort and the national interest and in conflict with the provisions of the National Security Act of 1947.

There are a number of other provisions in the bill which I believe could impair my capability to protect Intelligence Sources and Methods from unauthorized disclosure: (a) the Privacy Protection Commission, established under the bill, is granted absolute authority to investigate alleged violations; to conduct a study of standards and procedures to protect personal information; and to conduct hearings, take testimony, and subpoena witnesses and records as it deems necessary; (b) sections 104 and 105 require an agency to furnish any data, reports, or other information that the Commission deems necessary to carry out its functions; and (c) subsection 201(c)(3) requires the publication of specific data regarding files of personalities, including employees, and information systems maintained by the Agency.

Finally, section 304 grants jurisdiction to the district courts of the United States to hear civil actions brought under the Act and provides for an in camera examination and determination by the court of information for which an exemption is claimed under section 203. The Federal agency has the burden of establishing that the information is properly classified and that it is excludable under the Act. Perhaps I can best convey my view regarding this provision by quoting from a 20 August 1974 letter from President Ford to the Chairmen of the Conference Committee considering amendments to the Freedom of Information Act (H.R. 12471). Those amendments presently include a nearly identical judicial review provision:

> "There are provisions...which would place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified, following an in camera inspection of the document by the court. If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed. I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations

> because of a judicially perceived failure to satisfy a burden of proof. My great respect for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security. The Constitution commits this responsibility and authority to the President. I understand that the purpose of this provision is to provide a means whereby improperly classified information may be detected and released to the public. This is an objective I can support as long as the means selected do not jeopardize our national security interests. I could accept a provision with an express presumption that the classification was proper and with in camera judicial review only after a review of the evidence did not indicate that the matter had been reasonably classified in the interests of our national security. Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis."
> (10 Weekly Compilation of Presidential Documents, No. 34, Aug. 26, 1974)

In summary, it is my view that the protection of Intelligence Sources and Methods requires that practically all of our information on individuals and the details of our information systems must remain classified and not subject to public disclosure under S. 3418. As indicated in my earlier letter, it would be my preference that the Central Intelligence Agency be completely exempted from the bill. If this is not possible, it is requested that this Agency be granted a partial exemption (language enclosed).

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

W. E. Colby
Director

Enclosure

Insert as new subsection 203(d)

"(d) The provisions of subsection 103(a)(2), subsection 104(a), subsection 105(a)(1), section 106, subsection 201(c) [except subsections (2), (3)(B), (3)(D) and (3)(F)], subsections 201(d) and (f), and section 202 shall not apply to the Central Intelligence Agency. Nor shall any other provision of this Act be construed so as to impair or affect the authorities and responsibilities of the Director of Central Intelligence under the National Security Act of 1947, as amended, or the Central Intelligence Agency Act of 1949, as amended."